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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States	)	IB Docket No. 96-111
and	)	
Amendment of Section 25.131 of the Commission's Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations	)	CC Docket No. 93-23 RM-7931
and	)	
COMMUNICATIONS SATELLITE CORPORATION Request for Waiver of Section 25.131(j)(1) of the Commission's Rules As It Applies to Services Provided via the Intelsat K Satellite	)	File No. ISP-92-007

COMMENTS OF AMSC SUBSIDIARY CORPORATION

AMSC Subsidiary Corporation ("AMSC") hereby submits its comments on the Notice of Proposed Rulemaking in the above-referenced proceeding.[1/] AMSC generally supports the Commission's proposal to continue its policy of considering spectrum availability in permitting access to foreign satellite system. As the Commission has recognized repeatedly, in the MSS L-band in which AMSC operates its domestic Mobile Satellite Service system, such a policy is critical

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1/ IB Docket No. 96-111, FCC 96-210 (May 14, 1996). This proceeding is generally referred to as *DISCO II*. DISCO is an acronym for Domestic International Satellite Consolidation Order. See also, *DISCO I*, 11 FCC Rcd. 3873 (1996).

if there is to be enough spectrum available through the international frequency coordination process for the domestic MSS system.[2/]

Background

The *DISCO II* NPRM proposes "a uniform framework for evaluating applications by users in the United States for authority to access satellites licensed by other countries." NPRM, para. 1. That framework combines (i) what it refers to as an "ECO-Sat" ("effective competitive opportunities for satellites") test of whether the foreign "home" and "route" markets offer a reciprocal opportunity for access by U.S. satellite systems with (ii) consideration of additional public interest factors, including spectrum availability and coordination. The Commission also seeks comment on the proper treatment of Intergovernmental Organizations ("IGOs"), such as Inmarsat. Finally, the Commission proposes to require all applications to use foreign systems to provide information demonstrating that they can meet relevant domestic technical requirements.

Discussion

The Importance of Spectrum Availability. AMSC's principal concern is that the policies the Commission adopts in this proceeding should continue to reflect the long-held Commission position, still accurate, that there is not sufficient spectrum in the MSS L-band to support more than one such system in the United States. The Commission made this decision in 1987 when it decided

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2/ In these comments, AMSC does not address the issue of "roaming," the incidental use of foreign MSS systems to provide service to foreign customers when they are occasionally and temporarily in the United States. Based on the evidence to date, AMSC is optimistic that land mobile roaming is sufficiently minimal and the policies of the Canadian and Mexican governments are sufficiently consistent with those of the United States that traffic on the Canadian and Mexican MSS systems can be treated as an exception to the general rule against the use of foreign systems in the MSS L-band.

to award only one license to a domestic system. Since then, the spectrum has only gotten more congested, particularly with the advent of the Inmarsat-3 satellites. The Commission recently rearticulated this position in its Order on Reconsideration and Further Notice of Proposed Rulemaking regarding provision of domestic aeronautical MSS. The Commission noted that although it

> generally promoted competition in satellite communications, ... the circumstances presented here pose certain limitations on the extent to which we can achieve a fully competitive U.S. market for MSS systems in the L-band. The spectrum in which the MSS systems will operate is limited and appears insufficient to meet the stated spectrum requirements for the North American coverage area for AMSC, Inmarsat and three other countries developing MSS systems - Canada, Mexico, and Russia. ...
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> We want competition in the U.S., but the first step is to ensure sufficient spectrum for the U.S. domestic MSS system to become an effective competitor. This will require successful completion of the current coordination process.[3/]

The *DISCO II* NPRM reflects the Commission's continued sensitivity by recognizing the need for a public interest test that considers spectrum availability and coordination. Specifically with respect to these two factors, the Commission noted:

> we may sometimes be faced with greater spectrum demand than we can accommodate. If there is sufficient spectrum to accommodate only a few systems, for a particular service or in a particular portion of the spectrum, the Commission will not be able to offer access to all non-U.S. systems any more than it can license all U.S. applicants. In assigning scarce frequencies we propose to treat non-U.S. systems that pass the ECO-Sat test as we would U.S.-licensed systems....
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> In considering spectrum availability and coordination, we also propose to consider as part of our public interest analysis whether the technology and spectrum available will support additional systems in the U.S. market. The technology available for some services may permit only one or very few satellite systems to serve the same geographic area over the same frequencies. In reviewing applications, there may be

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3/ CC Docket No. 87-75, FCC 96-161 (May 9, 1996), paras. 18-19.

> instances where there is insufficient spectrum to support competing U.S. and non-U.S. satellite systems to serve the United States. [footnote omitted] We recognize that efforts to coordinate spectrum may potentially be hindered if we authorize a non-U.S. satellite system, competing for the same spectrum, to serve the United States prior to completion of spectrum coordination. In situations where the United States and other administrations are engaged in coordination of spectrum covering the United States, we propose to consider the effect that any authorization of service would likely have on spectrum coordination efforts.

Disco II, paras. 50-51.

The present situation with coordination of the MSS L-band requires such a test. As the result of multilateral meetings in Mexico City in June,[4] the international coordination process has produced an arrangement for temporary division of the spectrum among the parties over the course of the next year and a half and a framework for future discussions (to be completed in mid-1997). Unfortunately, however, this temporary arrangement does not either eliminate the spectrum shortage in the bands or provide any assurance that the other parties to the negotiations will be accommodating over the longer term, as they add customers and demand for their services builds. Under the circumstances, regardless of how the Commission applies an ECO-Sat test, the Commission must maintain a strong policy of denying access to foreign systems if there is not sufficient spectrum for more than one domestic system.[5]

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[4] The international frequency coordination process for the MSS L-band involves AMSC, Inmarsat, Canada, Mexico, and Russia.

[5] The NPRM proposes to require all U.S.-licensed satellite operators to inform the FCC in writing of all foreign destinations where they are permitted to provide service and a description of the services that they are permitted to provide. NPRM, para. 39. AMSC opposes the imposition of such a reporting requirement at this time, at least on its service. Such a requirement would be burdensome and does not appear to be justified by any present need for information about barriers to entry by U.S.-licensed MSS systems. In the meantime, such information would only prove useful to AMSC's competitors.

Intergovernmental Organizations (Inmarsat). AMSC supports the need for a unique test for IGOs that includes a careful examination of the impact that their access to the United States might have on the international frequency coordination process and the ability of regional and domestic systems to compete.

The Commission recognizes in the NPRM that IGOs such as Inmarsat

> have certain privileges and immunities that may provide them with competitive advantages over competing satellite service providers. For example, they hold tax free status and may be exempt from national regulations, and competition laws. They also have established dominant positions in the global market by virtue of their size and of the fact that, in general, their members are the primary if not exclusive providers of fixed and mobile maritime services in most major national markets.

Disco II, para. 62.

Inmarsat is a dominant operator of MSS systems globally. It has a massive investment in satellite resources that operate, relatively inefficiently, throughout the MSS L-band, and provide a major challenge to any effort by domestic or regional systems to gain access to sufficient spectrum resources to provide a viable alternative.[6/] Inmarsat's financial resources are demonstrated by its successive deployment over less than six years of over eight Inmarsat-2 and Inmarsat-3 satellites, with the Inmarsat-3 satellites being built even before Inmarsat had finished launching the last Inmarsat-2 satellite. The presence of all these satellites necessarily makes coordination much more difficult than otherwise.

6/ Inmarsat is comprised of signatories from 79 countries. It operates a satellite system in the L-band that will include more than eight satellites in geostationary orbit, including four Inmarsat-2 satellites that were launched during the past six years. Beginning this year, Inmarsat is launching a series of four Inmarsat-3 satellites, all of which will also operate in the MSS L-band. Three of Inmarsat's operating regions overlap on North American satellite systems, such as that of AMSC.

The spectrum inefficiency of Inmarsat's systems is also problematic for coordination. For example, Inmarsat continues to deploy terminals using its Standard A technology, a technology that has long been recognized to be spectrum inefficient. The deployment of these terminals may be financially remunerative to Inmarsat and its signatories and it may have been benign in an era when Inmarsat was the only system operating in the band, but at this stage their continued deployment creates an ongoing hurdle to the successful development of the systems of AMSC and others in the region.

Compliance with technical requirements. AMSC supports the Commission's proposal to require all applications to use foreign systems to provide information demonstrating that they can meet relevant domestic technical requirements. The Commission says that this is "critical," since "[o]therwise market entry by non-U.S. systems would distort our competitive policies, disadvantage U.S. satellite operators and service providers, and jeopardize our spectrum management policies." Id.

Such concerns are important to any consideration of the domestic operation of foreign systems in the MSS L-band. In licensing AMSC's mobile terminals to operate via this system, the Commission required the submission of basic technical information needed to determine the extent of potential interference to other systems, including unwanted emission levels needed in order to ascertain compliance with standards for protecting radionavigation systems.[7] Due to restrictions

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[7] See, e.g., Order & Authorization, File No. 681-DSE-MP/L-95, DA 95-1701, at para. 28 (August 1, 1995), citing Memorandum of Understanding Between The Federal Communications Commission, National Telecommunications and Information Administration, and Federal Aviation Administration (November 18, 1994).

that exist on the use of the upper and lower MSS L-bands, the Commission also required a showing as to how the applicant would operate its system in a manner that would protect aeronautical and maritime safety communications. 47 C.F.R. Section 2.106 footnotes US308, US315, and 730C. All of these issues would be directly relevant to the domestic operation of foreign systems.

Conclusion

Therefore, for the above-stated reasons, AMSC urges the Commission to continue to limit the U.S. domestic use of foreign satellites in the MSS L-band.

Respectfully submitted,

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